

### **REMARKS**

Claims 1 and 6-16 are pending in the present application. Claim 1 is herein amended. The amendment to claim 1 is at least supported by original claim 5. No new matter is added by this amendment. Claims 2-5 were previously cancelled. Claims 13-15 were previously withdrawn from consideration. Applicant respectfully requests that claims 13-15 be rejoined to the elected claims upon a finding of allowability of claim 1. Reconsideration of the pending claims is respectfully requested.

In the Office Action, the Examiner has rejected claims 1, 6-12 and 16 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner alleges the limitation “-SO<sub>3</sub>-Y<sub>3</sub>’ ” in independent claim 1 is not supported in the specification. However, Applicant respectfully submits that the element “-SO<sub>3</sub>-Y<sub>3</sub>’ ” is clearly supported by the original specification in at least paragraphs [0091]-[0096] of the U.S. publication of the present application, U.S. Patent Publication No. 2006/0205624. As shown, the element appears in formula (4) and the reference values are described in at least the portion of the specification as discussed. Therefore, Applicant respectfully requests withdrawal of this rejection. Furthermore, Applicant respectfully submits that the rejection is moot in view of the present amendment to claim 1.

In addition, the Examiner states that previously submitted claim 1 was directed to an invention that is independent or distinct from the invention originally claimed as the applicant previously elected the photocatalyst of formula (1b). The Examiner then withdrew claim 1 from

consideration as being directed to a non-elected invention. Applicant notes that the immediately preceding version of claim 1 was drawn to a photocatalyst having formula (4). Without conceding to the propriety of the Examiner's comments and to advance prosecution, Applicant has herein amended claim 1 to recite the photocatalyst of formula (1b) as originally presented in cancelled claim 5 and as originally elected by the Applicant. As such, the reference to formula (4) is herein cancelled from claim 1. Accordingly, Applicant respectfully submits that present claim 1 is directed to the invention as originally claimed and respectfully requests the Examiner to consider present claim 1.

In the Office Action, claims 1, 6-12 and 16 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 10-19, 21 and 22 of co-pending app. No. 11/661,174 in view of U.S. Patent No. 5,916,481 to Willey (hereinafter "*Willey*"). The Applicant notes the Examiner's suggestion that a Terminal Disclaimer may be used to overcome the provisional double patenting rejection. Upon the indication of allowability of the claims with respect to all other rejections, Applicant will take up the matter of filing a Terminal Disclaimer.

In the Office Action, the Examiner has rejected claims 1, 6 and 10 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0087791 to *Bonelli* et al. (hereinafter "*Bonelli*") in view of U.S. Patent No. 5,211,719 to Kaser (hereinafter "*Kaser*") and U.S. Patent No. 5,853,929 to Campbell (hereinafter "*Campbell*"). The rejection is respectfully traversed and reconsideration is requested.

Independent claim 1, as amended, is allowable over *Bonelli* in view of *Kaser* and *Campbell* in that claim 1 recites a combination of elements, including, for example, “one water-soluble phthalocyanine photocatalyst of formula 1(b)” and “at least one azo dyestuff and/or at least one triphenylmethane dyestuff, which produce a relative hue angle of 220 - 320°, wherein the dyestuff component is degraded when the composition is exposed to sunlight and wherein the degradation rate of the azo dyestuff(s) and/or triphenylmethane dyestuff(s) is at least 1 % per 2 hours.” As established below, *Bonelli*, *Kaser* or *Campbell*, singly or in combination, do not disclose, teach or even suggest at least these features of the claimed invention.

The Examiner relies on *Bonelli* to generally disclose a “laundry detergent composition comprising photobleach” which is “a mixture of zinc and aluminum phthalocyanine sulphonate.” The Examiner asserts that this is the photocatalyst, as claimed in claim 1. In the present Amendment, Applicants have amended formula (1b) for the presently claimed photocatalyst, as originally recited in cancelled claim 5 and now recited in independent claim 1. In particular, the formula (1b) has been amended to eliminate the presence of sulfo groups and their salts or sulphonate groups. Accordingly, because present independent claim 1 does not encompass the zinc and aluminum phthalocyanine sulphonate of *Bonelli*, Applicant respectfully submits that *Bonelli* does not disclose, teach or even suggest the presently claimed photocatalyst having formula (1b).

Further, Applicant respectfully submits that the presently recited formula (1b) is not obvious over *Bonelli*. *Bonelli* only discloses the use of a blend of zinc and aluminum

phthalocyanine sulphonates or the use of aluminum phthalocyanine sulphonate alone (see paragraphs [0080] and [0081]). Accordingly, one of ordinary skill in the art would not change the phthalocyanine sulphonate of *Bonelli* to be a photocatalyst as encompassed by present claim 1. Therefore, Applicant respectfully submits that *Bonelli* does not disclose, teach or even suggest the presently claimed photocatalyst having formula (1b).

Applicant respectfully submits that *Kaser* or *Campbell* do not cure these deficiencies of *Bonelli*. Neither *Kaser* nor *Campbell* disclose, teach or suggest the presently claimed photocatalyst having formula (1b). Further, Applicant agrees with the Examiner's statement that *Bonelli* does not teach a composition comprising "at least one azo dyestuff and/or at least one triphenylmethane dyestuff, which produce a relative hue angle of 220 - 320°, wherein the dyestuff component is degraded when the composition is exposed to sunlight and wherein the degradation rate of the azo dyestuff(s) and/or triphenylmethane dyestuff(s) is at least 1 % per 2 hours," as presently claimed in independent claim 1.

Applicant respectfully submits that *Kaser* or *Campbell* do not cure these deficiencies of *Bonelli*. The Examiner asserts that *Kaser* discloses anionic disazo dyes and that *Campbell* discloses a colored toner with a relative hue angle of 220-320°. The Examiner further states that degradation at a rate of at least 1% per 2 hours is necessarily present if the anionic disazo dyes of *Kaser* is blended with the composition of *Bonelli*. Applicant respectfully disagrees with the Examiner's assertion.

There is no indication to one of ordinary skill in the art in any of the cited references that the presently claimed “degradation rate” would be necessarily present or inherent if the dyes of *Kaser* are blended with the composition of *Bonelli*. The Examiner has not shown how the recited “degradation rate” is necessarily present in the cited references. As stated in MPEP §2112, “the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82 (CCPA 1981). To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).” Therefore, without a showing by the Examiner that the “degradation rate,” as recited in independent claim 1 is necessarily present, Applicant respectfully submits the Examiner’s reliance on inherency is improper.

Accordingly, Applicant respectfully submit that claim 1, and claims 6 and 10, which depend from claim 1, are allowable over the cited references and therefore, respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection.

In the Office Action, the Examiner has rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over *Bonelli* in view of *Kaser* and *Campbell* as applied to claims 1, 6 and 10, and further in view of U.S. Patent No. 4,405,329 to *Abel* et al. (hereinafter “*Abel*”). The rejection is respectfully traversed and reconsideration is requested.

Claim 7 is allowable over the cited references in that claim 7 depends from independent claim 1 and accordingly recites a combination of elements, including for example, “one water-soluble phthalocyanine photocatalyst of formula 1(b)” and “at least one azo dyestuff and/or at least one triphenylmethane dyestuff, which produce a relative hue angle of 220 - 320°, wherein the dyestuff component is degraded when the composition is exposed to sunlight and wherein the degradation rate of the azo dyestuff(s) and/or triphenylmethane dyestuff(s) is at least 1 % per 2 hours.” The cited references, singly or in combination, do not disclose, teach or even suggest at least these features of the claimed invention.

As discussed above, *Bonelli* in view of *Kaser* and *Campbell* does not disclose, teach or even suggest the features of present claim 1, from which claim 7 depends. Present independent claim 1 does not encompass the zinc and aluminum phthalocyanine sulphonate of *Bonelli*. Therefore, *Bonelli* in view of *Kaser* and *Campbell* does not disclose, teach or even suggest the features of present claim 7, which depends from independent claim 1.

Applicant respectfully submits that *Abel* does not cure the above-mentioned deficiencies of *Bonelli* in view of *Kaser* and *Campbell*. *Abel* does not disclose, teach or suggest the presently claimed photocatalyst having formula (1b). Further, Applicant agrees with the Examiner’s

statement that *Bonelli* in view of *Kaser* and *Campbell* does not disclose an azo dyestuff as claimed in claim 7. Accordingly, the cited references do not disclose, teach or even suggest each and every element of claim 7 and therefore, the rejection based on 35 U.S.C. § 103(a) is improper. Accordingly, Applicant respectfully requests the Examiner withdraw the rejection.

In the Office Action, the Examiner has rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over *Bonelli* in view of *Kaser* and *Campbell* as applied to claims 1, 6 and 10, and further in view of JP Publication No. 62025171 to *Matsumoto* (hereinafter “*Matsumoto*”). The rejection is respectfully traversed and reconsideration is requested.

Claim 8 is allowable over the cited references in that claim 8 depends from independent claim 1 and accordingly recites a combination of elements, including for example, “one water-soluble phthalocyanine photocatalyst of formula 1(b)” and “at least one azo dyestuff and/or at least one triphenylmethane dyestuff, which produce a relative hue angle of 220 - 320°, wherein the dyestuff component is degraded when the composition is exposed to sunlight and wherein the degradation rate of the azo dyestuff(s) and/or triphenylmethane dyestuff(s) is at least 1 % per 2 hours.” The cited references, singly or in combination, do not disclose, teach or even suggest at least these features of the claimed invention.

As discussed above, *Bonelli* in view of *Kaser* and *Campbell* does not disclose, teach or even suggest the features of present claim 1, from which claim 8 depends. Present independent claim 1 does not encompass the zinc and aluminum phthalocyanine sulphonate of *Bonelli*.

Therefore, *Bonelli* in view of *Kaser* and *Campbell* does not disclose, teach or even suggest the features of present claim 8, which depends from independent claim 1.

Applicant respectfully submits that *Matsumoto* does not cure the above-mentioned deficiencies of *Bonelli* in view of *Kaser* and *Campbell*. *Matsumoto* does not disclose, teach or suggest the presently claimed photocatalyst having formula (1b). Further, Applicant agrees with the Examiner's statement that *Bonelli* in view of *Kaser* and *Campbell* does not disclose the triphenylmethane dyestuff as claimed in claim 8. Accordingly, the cited references do not disclose, teach or even suggest each and every element of claim 8 and therefore, the rejection based on 35 U.S.C. § 103(a) is improper. Accordingly, Applicant respectfully requests the Examiner withdraw the rejection.

In the Office Action, the Examiner has rejected claims 9, 11, 12 and 16 under 35 U.S.C. § 103(a) as being unpatentable over *Bonelli* in view of *Kaser* and *Campbell* as applied to claims 1, 6 and 10, and further in view of *Willey*. The rejection is respectfully traversed and reconsideration is requested.

Claims 9, 11, 12 and 16 are allowable over the cited references in that each claim depends from independent claim 1 and accordingly recites a combination of elements, including for example, "one water-soluble phthalocyanine photocatalyst of formula 1(b)" and "at least one azo dyestuff and/or at least one triphenylmethane dyestuff, which produce a relative hue angle of 220 - 320°, wherein the dyestuff component is degraded when the composition is exposed to sunlight and wherein the degradation rate of the azo dyestuff(s) and/or triphenylmethane



dyestuff(s) is at least 1 % per 2 hours.” The cited references, singly or in combination, do not disclose, teach or even suggest at least these features of the claimed invention.

As discussed above, *Bonelli* in view of *Kaser* and *Campbell* does not disclose, teach or even suggest the features of present claim 1, from which claims 9, 11, 12 and 16 depend. Present independent claim 1 does not encompass the zinc and aluminum phthalocyanine sulphonate of *Bonelli*. Therefore, *Bonelli* in view of *Kaser* and *Campbell* does not disclose, teach or even suggest the features of present claims 9, 11, 12 and 16, which depend from independent claim 1.

Applicant respectfully submits that *Willey* does not cure the above-mentioned deficiencies of *Bonelli* in view of *Kaser* and *Campbell*. *Willey* does not disclose, teach or suggest the presently claimed photocatalyst having formula (1b). Further, Applicant agrees with the Examiner’s statement that *Bonelli* in view of *Kaser* and *Campbell* does not disclose the features as presently claimed in claims 9, 11, 12 and 16. Accordingly, the cited references do not disclose, teach or even suggest each and every element of claims 9, 11, 12 and 16 and therefore, the rejection based on 35 U.S.C. § 103(a) is improper. Accordingly, Applicant respectfully requests the Examiner withdraw the rejection.

In view of the foregoing, the Applicant respectfully submits that the pending claims are allowable over the cited reference and respectfully requests such allowance.

Applicant: Alfred HOHENER  
Application No. 10/567,203  
Docket No.: C000022936

The proper fees for a Petition to Revive an Unintentionally Abandoned Application and for a Request for Continued Examination are submitted herewith; thus, it is believed that no further fees are presently due. However, if necessary, the Commissioner is authorized to charge Deposit Account No. 08-2789 in the name of Howard & Howard Attorneys PLLC for any additional fees or to credit the account for any overpayment.

Respectfully submitted,

**HOWARD & HOWARD ATTORNEYS PLLC**

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